

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL PAK 9/2023
(Please use this reference in your reply)

22 November 2023

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 51/8, 54/14, 52/9 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **enforced disappearances, detention, and prosecution of individuals, including protesters, media workers, journalists, and public figures, believed to be in relation to their support or perceived support of the Pakistan Tehreek-e-Insaf (PTI) party in the context of the ousting and arrest of former Prime Minister Mr. Imran Khan.**

Concerning the alleged enforced disappearances of Mr. Akash Ramchandani and Mr. Sami Abraham, the Working Group on Enforced or Involuntary Disappearances transmitted the cases to the authorities under its urgent humanitarian procedure on 28 April and 5 June 2023, respectively. The Working Group regrets the lack of response by the State authorities.

According to the information received:

Background

In April 2022, a parliamentary Vote of No Confidence led to the removal of Mr. Imran Khan as the Prime Minister of Pakistan. Since his ousting, mass protests in support of Mr. Khan have taken place across the country.

On 9 May 2023, the former Prime Minister was arrested by the Pakistani military and held for four days, before the Supreme Court ruled his detention illegal. His arrest sparked nationwide protests, reportedly resulting in various forms of restrictions targeting his supporters, as well as journalists and media workers reporting critically on the matter. On 5 August, Mr. Khan was arrested again by police in relation to a corruption case.

Targeting of supporters of the PTI party

On 9 May 2023, Ms. **Khadijah Shah** joined a protest against the arrest of Mr. Imran Khan. On 19 May, police searched Ms. Shah's house, office, factory

as well as her friends' residences, in relation to her alleged lead role in inciting riots. On 23 May 2023, Ms. Shah was arrested by police at the Capital City Police Office in Lahore. She voluntarily joined the investigation (First Information Report--FIR 96/23) even though she was not named in the FIR. Following her arrest, it was widely reported in the media that Ms. Shah was allegedly involved in criminal acts during the aforementioned protest. On 24 May, she was brought before the Anti-Terrorism Court (ATC)¹, remanded to judicial custody for 6 days and ordered to appear before the ATC. On 30 May, Ms. Shah's detention reportedly became unlawful as the Investigation Officer failed to appear before the ATC.

On 10 June 2023, Ms. Shah applied to the ATC for post-arrest bail. On 16 June, the authorities implicated her in a 2nd FIR (127/123), relating to incidents of arson during the 9 May protest, despite her not being named in the FIR. In response, Ms. Shah applied for post-arrest bail again. On 22 June, the ATC denied Ms. Shah's bail applications. On 26 June, she sent two more bail applications to the Lahore High Court (LHC) which were denied by the ATC on 23 September.

On 18 October 2023, in response to her two bail petitions, the LHC ordered Ms. Shah's release on bail, stating there was no evidence she participated in any violent activity during the 9 May protest. However, Ms. Shah was not released, but rather re-arrested in another FIR (109/23), despite the fact that the police had assured the LHC that there was no other case against her. This FIR had not been disclosed before the LHC. In response, Ms. Shah filed a contempt petition against high-ranking police which remains pending at the time this communication is sent.

On 3 November 2023, the Inspector General Police of Punjab failed to satisfy the court on questions of Ms. Shah's arrest, lack of police interrogation while in custody and guarantee to avoid further arrests. On 6 November, the Judge summoned the Federal Investigation Agency's record against Ms. Shah in the FIR related to 9 May riots. On 15 November, Ms. Shah was granted bail in all four cases against her. However, the authorities have now issued an "MPO" (i.e. Maintenance of Public Order) ordinance against her which extends her incarceration for another 30 days.

During this entire time, Ms. Shah was detained in police custody and jail, housed with convicted prisoners, denied basic facilities, and given extremely limited contact with her family and legal counsel. She is currently being kept at Kot Lakhpat Prison, Lahore.

Ms. Shah is not an office holder of any political party in Pakistan. She previously attended numerous protests and rallies organized by the PTI. She is also the granddaughter of a former Chief of Army Staff. Her arrest and detention are perceived to be a tool meant to send a message to families of military personnel to relinquish support for Mr. Imran Khan.

¹ The Anti-Terrorism Court has been the subject of prior communications sent by Special Procedures (See e.g. AL PAK 6/2018, sent on 24 October 2018)

We have also received reports of more than a dozen women deemed to be supporters of PTI continuing to be arrested and detained, some of them subject to additional FIRs upon receiving successful court decisions for bail.

Targeting of journalists and media outlets

Reports were received concerning the alleged enforced disappearances and subsequent detentions in undisclosed locations of media workers and journalists, particularly of the media outlet BOL News. Reportedly, these attacks are the latest in a series of actions taken against BOL News and its staff, which is related to the media outlet's coverage on recent political developments.

In April 2023, the Pakistan Electronic Media Regulatory Authority (PEMRA) imposed a ban on the media outlet BOL News from covering the clashes between law enforcement and PTI supporters in Islamabad. PEMRA noted that airing such content violates the Supreme Court's judgment in *suo moto* case No. 28 of 2018, and added that non-compliance to the ban would result in the channel's license being suspended without notice.

On 11 April 2023, at around 5:30am, a group of armed individuals entered the apartment of BOL News' Head of Marketing, Mr. **Akash Ramchandani**. The armed individuals reportedly tied his hands, stuffed a cloth in his mouth, put a black cloth on his head and abducted him. Two security guards and one of his assistants were also abducted by the unidentified individuals. During the attack, the wife of Mr. Akash Ramchandani was locked in a room to prevent her from seeking help. It is reported that the incident was recorded by CCTV footage, in which four vehicles could be seen.

On the following day, the relatives of Mr. Akash Ramchandani filed a complaint to the police, Station House Officer P.S Darakhshan, Karachi. At the time this communication is sent, no information on the status of the investigation had been made available, nor was there any further information on the fate and whereabouts of Mr. Akash Ramchandani.

On 23 May 2023, President of BOL News Mr. **Sami Abraham** and his driver were stopped by unknown vehicles as Mr. Abraham was leaving his office in Islamabad. They were reportedly taken to an unknown location by approximately 8 to 10 unknown individuals in plain clothes. Mr. Sami Abraham's relatives submitted requests about his fate and whereabouts to the local police stations and the Islamabad High Court.

Though his driver was immediately released, Mr. Sami Abraham's whereabouts remained unknown until 30 May when he was returned to his home. The individuals responsible reportedly confiscated his personal items, such as his backpack, his mobile phone and his car keys.

Prior his arrest, Mr. Sami Abraham had openly expressed critical views of the incumbent Prime Minister and the military.

Furthermore, we received reports regarding the arrest and subsequent enforced disappearance of BOL News editor and journalist, Mr. **Imran Riaz Khan**, in connection with his perceived alignment with former Prime Minister Mr. Imran Khan and the PTI. On 11 May 2023, Mr. Imran Riaz Khan was arrested at Sialkot airport. He is reportedly the subject of 17 charges under the 2016 Prevention of Electronic Crimes Act and several articles of the Penal Code, including “hurting the sentiments of the Pakistani people” and “treason”, brought against him by the Punjab Prosecutor’s Office.

Though he was released later on the day of 11 May 2023, Mr. Riaz Khan was then forcibly disappeared by unknown individuals shortly after his release. On 12 May 2023, a writ petition concerning his fate and whereabouts was filed by his legal representative. The Lahore High Court instructed the Attorney General to bring Mr. Riaz Khan before the court on the same day, though these orders were not followed. The Sialkot authorities were then given a 48-hour deadline to find Mr. Riaz Khan.

On 16 May 2023, a FIR concerning the whereabouts of Mr. Imran Riaz Khan was registered with Civil Lines police, upon the complaint of his family. The FIR was registered against “unidentified persons” and police officials for allegedly forcibly disappearing Mr. Riaz Khan, invoking Section 365 (kidnapping or abducting with intent secretly and wrongfully to confine a person) of the Penal Code. On 25 May 2023, the Lahore High Court resumed a plea hearing seeking the whereabouts and safe return of Mr. Riaz Khan. The Lahore Police Deputy Inspector General told the Lahore High Court that both the Inter-Services Intelligence and the Military Intelligence said that Mr. Riaz Khan was not in their custody. At a previous hearing, the Punjab Inspector General told the Court that there was no trace of the journalist at any police department across the country.

On 30 May 2023, a representative from the Ministry of Defence told the Lahore High Court at a subsequent hearing that they had been unable to ascertain Mr. Riaz Khan’s whereabouts. Mr. Riaz Khan’s legal representative also shared with the Lahore High Court that phone numbers had been traced back to Afghanistan.

On 25 September, the Sialkot police announced on social media platform X (formerly Twitter) that “Journalist/anchor Mr. Imran Riaz Khan has been safely recovered. He is now with his family.” There has not been any public disclosure of information about his enforced disappearance, nor about any measure taken against those responsible of his enforced disappearance.

It is reported that journalists have been facing various forms of restrictions in the context of their work for several years. On 23 November 2020, Mr. **Rana Abrar Khalid**, senior reporter with Daily Jehan Pakistan, sent a right to information (RTI) request to the Public Information Office. The RTI request sought specific information about the gifts former Prime Minister Imran Khan had received by Heads of States during his tenure. Between December 2020 and April 2023, Mr. Khalid made several requests to the Pakistan Information Commission (PCI), per the Right of Access to Information Act 2017. Yet, his

requests were consistently refused by the Cabinet Division. On 6 April 2023, the Islamabad High Court closed the case, while the Cabinet had in the meantime uploaded the full details of the foreign gifts received by all government officials during official foreign visits from 2002-2023, including those received by former Prime Minister Imran Khan.

During the almost 2.5 years of legal battle, Mr. Khalid was reportedly subject to stigmatization, threats and harassment by the federal government and intelligence agencies as a result of his RTI request and his involvement in holding the Cabinet Division accountable for their conduct. Mr. Khalid's employment with two different media outlets was terminated due to alleged "pressure" from the Federal Minister of Information and Broadcasting. There are also reports that his home was raided by unknown persons allegedly linked to the government in September 2021, while his family members were threatened and harassed on various occasions. Due to his work, Mr. Khalid has been subject to stigmatization and has as a result struggled to find employment with media organizations in Pakistan.

Without prejudging the accuracy of the above information, we wish to express our deep concerns regarding the alleged enforced disappearances of Mr. Akash Ramchandani, Mr. Sami Abraham and Mr. Imran Riaz Kahn, as well as the targeting of other BOL News staff. We are deeply concerned by reports that Mr. Akash Ramchandani, Mr. Sami Abraham and Mr. Imran Riaz Kahn have all been targeted due to their political expression and the exercise of their right to freedom of expression in the context of the ousting and arrest of former Prime Minister Imran Khan.

A free and uncensored press is essential in any society and constitutes one of the cornerstones of a democratic society. Journalists, media outlets and publishers should not be penalized for reporting or disseminating critical views and dissenting opinions in line with international standards. We stress that in order to protect the safety and security of journalists, States have an obligation to create an enabling environment for the free communication of information and ideas about public and political issues, as underscored in the report A/HRC/50/29 presented to the Human Rights Council by the Special Rapporteur on freedom of opinion and expression in 2022. In this context, we remind your Excellency's Government of the importance of protecting journalists and media workers reporting on protests and on political affairs.

We underscore that the prohibition of enforced disappearance has attained the status of *jus cogens*, as one of the most serious violations of human rights.² We urge your Excellency's Government to promptly respond and timely determine the fate and whereabouts of Mr. Akash Ramchandani, conducting a proper and independent investigation leading to such clarification, and to provide victims and their families with timely information and effective judicial remedy and reparations, to fulfil the right to truth and justice for victims, and the society as a whole, as required under international law. We also wish to express serious concerns at the enforced disappearance of Mr. Sami Abraham and Mr. Riaz Khan and stress the need to ensure accountability for these most serious human rights violations. An integral reparation program should be set up for all victims of enforced disappearances.

² See, Communication No. 449/1991, *Mojica v Dominican Republic*, Views adopted by the Human Rights Committee on 15 July 1994, para. 5.7 and Human Rights Committee, General Comment 36, paras 57 and 58.

In this regard, the Working Group on Enforced or Involuntary Disappearances would like to reiterate that, under international law, the failure or refusal to acknowledge a deprivation of liberty by State agents or persons or groups of persons acting with their authorization, support, and acquiescence, constitutes enforced disappearance, irrespective of the duration of the deprivation of liberty or the type of concealment concerned. State authorities are thus obliged to take all necessary measures to effectively protect the rights of the persons deprived of their liberty, as they automatically assume responsibility for their lives, physical integrity, and wellbeing.

We once again reiterate our standing recommendation to Pakistan to expeditiously criminalize enforced disappearance, as already stated in the letter to your Excellency's Government on 1 March 2021 (AL PAK 3/2021) and in the 2016 follow-up report of the Working Group on Enforced and Involuntary Disappearances to the Mission to Pakistan (A/HRC/33/51/Add.7, para. 29).

Furthermore, we express our concerns regarding the detention of Ms. Khadijah Shah, which seems related to the exercise of her right to freedom of peaceful assembly and to freedom of expression in support of former Prime Minister Mr. Imran Khan. Ms. Shah has remained in pre-trial detention for almost six months after her arrest, despite there being no formal charges filed against her.

We are concerned that Ms. Shah's right to fair trial may have been violated, as she has been repeatedly denied bail, and when granted bail by the LHC, she was not released but re-arrested and accused in another investigation. We are gravely concerned about the conditions of her detention, particularly that she is being denied basic facilities. We are also concerned that in the initial weeks of her detention, she was denied access to her family and legal counsel and this access today remains extremely limited.

Finally, we express concerns at the stigmatization, threats and harassment of Mr. Rana Abrar Khalid in response to his RTI application. We fear that the stigmatization, threats and harassment experienced by Mr. Khalid may deter other journalists from applying for RTI, thus hindering their work as journalists and undermining the right of the public to access information.

Our above concerns form part of a broader context, based on reports of other individuals who have also been targeted with enforced disappearance and subsequent detention, concerning the exercise of their right to freedom of expression and freedom of association. In this regard, we reiterate our concerns about the ongoing detention of human rights defender Mr. Idris Khattak (See PAK 4/2021, PAK 11/2020 and PAK 8/2020) and the alleged enforced disappearance and subsequent detention of Mr. Hasan Askree. We reiterate our call to immediately and unconditionally release those that are detained because of the exercise of his or her freedom of opinion or expression.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

We are issuing this appeal in order to safeguard the rights of above-mentioned individuals from irreparable harm and without prejudicing any eventual legal determination.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details and, where available, the results of any investigation and judicial or other inquiries that may have been carried out to determine the fate and whereabouts of Mr. Akash Ramchandani, Mr. Sami Abraham and Mr. Imran Riaz Khan, including the identification of the alleged perpetrator(s). If the alleged perpetrator(s) has or have been identified, please also indicate if any criminal sanctions or disciplinary measures have been imposed on them.
3. Please provide detailed information on the existing safeguards in the legal system guaranteeing the protection against enforced disappearances; guaranteeing due process and prompt and effective investigation into enforced disappearances; how these safeguards are effectively implemented, and what are the mechanisms to monitor and control their application.
4. Please provide information as to the legal and factual basis for the arrest, detention and prosecution of Ms. Khadijah Shah and Mr. Sami Abraham. Please clarify the safeguards that were granted to these individuals from the outset of their arrest and throughout judicial proceedings to ensure their trial is fair and in respect of due process standards, in particular their prompt and confidential access to lawyers, contact with the family, and medical examination by an independent expert.
5. Please provide detailed information on what steps have been taken to ensure that the conditions of detention of all of the above-mentioned individuals meet the international human rights standards enunciated in the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including the provision of adequate medical care where necessary, and the ability to meet with family members, and lawyers when necessary, as well as the Guiding principles for the search for disappeared persons (CED/C/7).
6. Please also indicate what measures have been taken to ensure that journalists are able to carry out their legitimate work in a safe and enabling environment in Pakistan, without fear of threats or acts of intimidation, harassment and violence of any sort.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that, after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Matthew Gillett

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Aua Baldé

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, the facts alleged, if proved correct, appear to be in contravention with articles 6, 7, 9, 10, 14, 16, 19 and 22, read alone and in conjunction with article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Pakistan on 23 June 2010.

We would furthermore like to refer to article 9 of the ICCPR, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. As interpreted by the Human Rights Committee in general comment no. 35 (CCPR/C/GC/35), the notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality (paragraph 12). According to the same general comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression and freedom of association, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law. As emphasised by the Human Rights Committee in general comment no. 32 (CCPR/C/GC/32), all trials in criminal matters must in principle be conducted orally and publicly (paragraph 28). (Id.). Article 14(3) of the ICCPR also guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, to be tried without undue delay, to defend themselves through legal assistance of their own choosing, and not to be compelled to testify against themselves or to confess guilt.

In relation to the national legislation, the Human Rights Committee expressed concern in 2017 about "the very broad definition of terrorism laid down in the Anti-Terrorism Act; by the Act's supremacy over other laws, including the Juvenile Justice System Ordinance, 2000, which enables the courts to try juveniles; by the power of the

authorities to detain a person for up to one year; and by the admissibility of confessions made in police custody as evidence in court, provided for in section 21-H of the Act” (CCPR/C/PAK/CO/1, para. 21). It also raised concerns at the extensive jurisdiction of antiterrorism courts and the huge backlog of cases, as well as the absence of procedural safeguards in court proceedings. We also wish to refer your Excellency’s Government to articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Pakistan acceded to on 23 June 2010, and which stipulate that no exceptional circumstances, including internal political instability or any other public emergency, may be invoked as a justification of torture, and that each State Party shall undertake to prevent other acts of cruel, inhuman or degrading treatment of punishment which do not amount to torture, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official. Furthermore, we wish to refer to articles 12 and 13, which state that when there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, State parties will conduct a prompt and impartial investigation, and ensure that the same is guaranteed for any individual who alleges he has been subjected to torture. Steps shall also be taken to ensure that the complainant and witnesses are protected against all ill treatment or intimidation as a consequence of his complaint or any evidence given.

We would like to remind your Excellency’s Government that the right to freedom of expression protects the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. Any limitation to the right to freedom of expression must meet the criteria established by the Covenant, in particular under article 19(3). Any restrictions must be provided by law, they must be necessary and proportionate, and must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. Human Rights Council Resolution 12/16 calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression (General Comment No. 34).

The Human Rights Committee expressed in General Comment No. 34 that the right to freedom of expression includes political discourse, and underscored that the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This further implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint.

In its General Comment No. 35, the Human Rights Committee raised concerns at “restrictions on political discourse [such as] the prohibition of [...] political commentary, and limiting access of opposition parties and politicians to media outlets” (para. 37). The Human Rights Committee further observed that “undue media dominance or concentration by privately controlled media groups”, may be “harmful to the diversity of sources and views” in public discourse. Accordingly, the Committee

underscored the duty of states to protect the diversity of media sources and prevent “monopolistic situations” is critical to the dissemination of opposing viewpoints, creating a media environment that is conducive to informed decision making (General Comment No. 34, para. 40).

We would further like to refer to the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance³ which establishes the prohibition to practice, permit or tolerate enforced disappearances (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); the obligation to criminalize enforced disappearances as an autonomous offence in domestic legislation (article 4) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7). In addition, the Declaration stipulates the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention (article 10). In particular, in its paragraphs 3 and 5 of article 13, the Declaration provides that States shall ensure that all persons involved in the investigation of cases of enforced disappearance, including the complainant, counsel and witnesses, are protected against ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished. Article 13 further stipulates that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Ultimately, the Declaration establishes the obligation to bring perpetrators of enforced disappearances before competent civil authorities for the purpose of prosecution and trial (article 14) and that victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible (article 19).

We underline that an enforced disappearance continues until the fate and whereabouts of the individual concerned are established irrespective of the time passed, and that the family members have a right to truth which means the right to know about the progress and results of an investigation, the fate or whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s) (A/HRC/16/48). We further recall that all victims of enforced disappearances, including relatives of those disappeared whose suffering is rooted in the primary violation against the disappeared person, and anyone who has suffered harm as a direct result of an enforced disappearance, have the right to know the truth and to reparation, including compensation (A/HRC/16/48, para. 39).⁴ We highlight that the anguish and sorrow of relatives of disappeared persons may reach the threshold of torture. The right to truth is therefore an absolute right which cannot be restricted and there is an absolute obligation to take all the necessary steps to find the disappeared person (A/HRC/16/48, General Comment, para. 4).

³ [Declaration on the Protection of all Persons from Enforced Disappearance.](#)

⁴ See, Communication No. 107/1981, *María del Carmen Almeida de Quinteros et al v. Uruguay*, Views adopted by the Human Rights Committee on 21 July 1983, para. 14.

In this regard, the Guiding Principles for the Search for Disappeared Persons of the Committee on Enforced Disappearances stipulate that the search for the disappeared should be considered as a continuing obligation (Principle 7) and be conducted on the basis of a comprehensive strategy (Principle 8). The Guiding Principles further establish that the search should be interrelated with the criminal investigation (Principle 13) and be independent and impartial (Principle 15).

In its General Comment on the right to recognition as a person before the law in the context of enforced disappearance ([A/HRC/19/58/Rev.1](#)), the Working Group on Enforced or Involuntary Disappearances noted that when a person deprived of liberty is not acknowledged by the State, the legal rights of this person are placed in a legal limbo, a situation of total defencelessness. The crime of enforced disappearance puts the detainee outside of the protection of the law, denies the person of legal existence and prevents the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms.

In this connection, in its General Comment on Article 10 of the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance, the Working Group stipulated that any deprivation of liberty must be done in an officially recognized place of detention and that in no circumstances a State interest may be invoked to justify or legitimize secret or unofficial places of detention (E/CN.4/1997/34 paras 23-24). In the event that an official investigation is carried out, and considering the distinctive components of an enforced disappearance and the participation of State agents and attempts to conceal information and cover up the crime, the Working Group noted it should be undertaken with the requisite autonomy and independence (A/HRC/45/13/Add.3 para. 95).

Moreover, in a study on enforced disappearances and economic, social and cultural rights, the Working Group on Enforced or Involuntary Disappearances noted that due to the collective character of certain economic, social and cultural rights, enforced disappearances of human rights activists violate their economic, social and cultural rights, the rights of others engaged in related activities, and of the larger community of people who relied on the disappeared person to represent and fight for their rights (A/HRC/30/38/Add.5 paras. 34-40).

We further refer to Human Rights Committee, General Comment No. 36, which highlights that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life, and results in a violation of the right to life. It further observes that States are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate these cases thoroughly, by independent and impartial bodies leading to the identification of potential perpetrators. The obligation to carry out prompt, thorough and impartial investigations shall be conducted *ex officio* if required. To this purpose, adequate complaint mechanisms should be made available, which should be independent and committed to carrying out impartial and prompt investigations into all allegations of enforced disappearances (A/HRC/45/13/Add.3 paras. 16 and 17).

In its country visit to Pakistan (A/HRC/22/45/Add.2), the Working Group on Enforced or Involuntary Disappearances recommended the establishment of a

constitutional, legal and regulatory framework, in particular in relation to the issue of the deprivation of liberty, be in full conformity with international standards in order to ensure that it does not give license to secretly detain or disappear anyone, or that it does not lead in practice to circumstances where enforced disappearances could be perpetrated (para. 91). Moreover, in light of the documented pattern of denials by state authorities to file First Information Reports (FIR) in relation to alleged enforced disappearances, the Working Group underlined that there should be effective complaints mechanisms and that a program of integral reparation should be set up for all victims of enforced disappearances (paras. 43 and 99). In its follow-up report to the Mission to Pakistan (A/HRC/33/51/Add.7), the Working Group stressed that all cases of harassment and reprisals should be adequately addressed by the relevant authorities and that proactive measures should be taken to guarantee the safety of the family members of the disappeared (para. 26).

Finally, we would also like to remind your Excellency's Government that while enforced disappearance is a crime in itself, it may also amount to torture or other cruel, inhuman or degrading treatment or punishment, and is a serious violation of international law. The Committee against Torture⁵ and the Human Rights Committee⁶ have concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of the disappeared. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is an international norm of *jus cogens*, reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

⁵ Communication No. 107/1981, *María del Carmen Almeida de Quinteros et al v. Uruguay*, Views adopted by the Human Rights Committee on 21 July 1983, para. 14.

⁶ See, for example, conclusions and recommendations on the second periodic report of Algeria (A/51/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).